

**In the Matter Of:**

**Bernard vs Fayetteville State University**

**JULIA FAIRCLOTH**

*March 10, 2025*

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
Civil Action No.: 5:24-CV-00219-BO-RN

LISA BERNARD, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
FAYETTEVILLE STATE UNIVERSITY,)  
 )  
Defendant. )  
 )

DEPOSITION  
VIA ZOOM VIDEO CONFERENCE OF  
JULIA KATHERINE FAIRCLOTH

Taken by Plaintiff  
March 10, 2025  
10:00 a.m.

Reported by: Ann Marie Agranoff  
Professional Reporter

APPEARANCES

For the Plaintiff:

OSBORN GAMBALE BECKLEY & BUDD, PLLC

By: Joseph D. Budd, Esq.  
721 W. Morgan Street  
Raleigh, North Carolina 27603  
Email: joe@counselcarolina.com

For the Defendant:

NC DEPARTMENT OF JUSTICE

By: Jeremy D. Lindsley, Esq.  
Assistant Attorney General  
P.O. Box 629  
Raleigh, NC 27602-0629  
Email: jlindsley@ncdoj.gov

Present via video teleconference:

Ayesha Malik  
Bonita Angel  
Joe Bates

Deposition of Julia Katherine Faircloth, taken  
by the Plaintiff on March 10, 2025 at 10:00 a.m.,  
before Ann Marie Agranoff, Professional Reporter,  
Notary Public.

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PROCEEDINGS

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Whereupon,

JULIA KATHERINE FAIRCLOTH,  
having been first duly sworn, was examined and  
testified as follows: Julia Katherine Faircloth

EXAMINATION

BY MR. BUDD:

Q. Thank you. Good morning. Is it  
Ms. Faircloth, Dr. Faircloth? I don't want to --

A. Mrs. is fine.

Q. Okay. Well, thank you for your time this  
morning. My name is Joe Budd. I'm the attorney  
representing Lisa Bernard in this lawsuit. Before  
we get too into the weeds I have a few questions  
that I want to ask you first.

Have you ever given a deposition before?

A. If I have, I do not recall doing it.

Q. Okay. Not a problem. Since that's the  
case, I'm going to ask you -- I'm just going to  
give you a few more details in addition than I  
normally would. Okay? Do you understand that you  
just told an oath to tell the truth, just like you  
were sitting in the courthouse in front of a judge  
and jury?

1 A. Yes.

2 Q. All right. Is there anything that you  
3 didn't understand about the oath or your obligation  
4 to tell the truth today?

5 A. No.

6 Q. Okay. I know this sounds intrusive and I  
7 don't intend it to be, but are you on any  
8 medication that would interfere with your ability  
9 to tell the truth today?

10 A. No.

11 Q. Are you on any medication or anything that  
12 would interfere with your ability to answer and  
13 understand my questions?

14 A. No.

15 Q. Okay. Are you aware of anything that would  
16 prevent you from answering my questions truthfully  
17 today?

18 A. No.

19 Q. Okay. There might be times today where I  
20 ask you questions where you don't fully understand  
21 what I'm asking, and to be honest there might be  
22 times where I don't fully understand what I'm  
23 asking.

24 If that is the case, could you please just  
25 ask me and I'll be happy to rephrase the question

1 for you. Okay?

2 A. Okay.

3 Q. And on that note, do you agree that if you  
4 answer any question today, that means that you  
5 fully understood the question that I asked?

6 A. Yes.

7 Q. Okay. At no point in time today will I ask  
8 you anything about what you or Jeremy -- what you  
9 talked to Jeremy about or Ms. Angel or any other  
10 attorney who is representing Fayetteville State.  
11 Okay?

12 A. Okay.

13 Q. So if you think that's what I'm asking for,  
14 I don't intend that and Jeremy will probably grab  
15 the microphone and get you to stop talking. Okay?

16 This is not a marathon. If you need to  
17 take a break at any point, just please let me know.  
18 Okay? The only thing I ask is that if we're in the  
19 middle of a question, that you please just answer  
20 the question that I asked and then we can take a  
21 break. Okay?

22 You're doing a great job so far. Please  
23 just verbalize any question -- any answers that you  
24 make. Even though it's a video deposition and you  
25 and I can see each other, the record is not

1 necessarily going to reflect nodding. And so if I  
2 ask you, is that a yes, is that a no, I'm not  
3 trying to be a jerk or being rude or at least not  
4 in that instance, so I'm just asking to make sure  
5 the record is clean. Okay?

6 A. Okay.

7 Q. Last thing, this can sometimes get to  
8 conversation. Oftentimes in conversations people  
9 are interrupting each other, talking over each  
10 other, like you're anticipating what I'm saying,  
11 what I'm asking and you're just going to come in  
12 and answer the question. I just ask that you  
13 please do your best to try and hold off on  
14 answering a question until I've asked it fully.  
15 That way the transcript, at the end, again, is  
16 going to be clean and neat. Okay?

17 A. Okay.

18 Q. I will do my best as well. I'm going to --  
19 I do it all the time and I'm guilty of it just as  
20 much as anybody else. So I'm just asking for your  
21 forgiveness in the event that I do that but also I  
22 just set it out up front. Okay?

23 Again, for the sake of a clean and clear  
24 record, I'm going to use just a few terms today as  
25 shorthand. If I use the term plaintiff or Lisa or



1 Ms. Bernard, I'm going to be referring to my  
2 client, Lisa Bernard.

3 Do you understand that?

4 A. Yes.

5 Q. And if I use the term University or  
6 defendant or FSU, I'm referring to defendant,  
7 Fayetteville State University.

8 Do you understand that?

9 A. Yes.

10 Q. All right. Ms. Faircloth, you are aware  
11 that you've been designated pursuant to Rule  
12 30(b)(6) as a corporate designee to testify on  
13 behalf of Fayetteville University; correct?

14 A. Yes.

15 Q. And you're aware that the University has  
16 given you authority to speaking on its behalf and  
17 bind the organization with your testimony?

18 A. Yes.

19 Q. And you've agreed to do that?

20 A. Yes.

21 Q. Ma'am, what is your title at the  
22 University?

23 A. I'm the associate director for human  
24 resources.

25 Q. Do you know who selected you to speak on

1 on behalf of FSU today?

2 A. No.

3 Q. Okay. Do you have any inkling as to why  
4 you were selected to speak on behalf of FSU?

5 A. Yes.

6 Q. Why do you think that you were selected to  
7 speak on behalf of the University?

8 A. I think because of the processes that are  
9 handled in the human resources office, familiarity  
10 with policy and with this specific situation.

11 Q. Okay. Is it safe -- fair to say that you  
12 are probably the person most knowledgeable at the  
13 University of the topics that are in the amended  
14 notice of 30(b)(6) deposition of the University?

15 A. Yes.

16 Q. All right. On that note, I think you've  
17 got in front of you what I've marked as Exhibit 1.  
18 That is the amended notice of 30(b)(6) deposition  
19 of defendant Fayetteville University.

20 A. Yes.

21 Q. Do you have that in front of you?

22 A. Yes.

23 Q. Have you seen this document before today?

24 A. Yes.

25 Q. And have you seen the topics listed in this

1 exhibit?

2 A. Yes.

3 Q. All right. If you haven't or if you want

4 to just refresh your recollection, there are

5 thirteen topics that are listed on this Exhibit.

6 For all thirteen of these topics are you prepared

7 to testify to those topics on behalf of the

8 University?

9 A. Yes.

10 Q. Did FSU conduct a complete investigation in

11 response to topics on these -- this notice?

12 A. Yes.

13 Q. And did you participate in the

14 investigation into those topics?

15 A. To the extent that I was asked for

16 documentation, yes.

17 Q. Do you know of anyone else who participated

18 into the investigation of these topics on behalf of

19 the University?

20 A. Yes.

21 Q. Who else?

22 A. Ms. Bernard's supervisor, Sandra Williams.

23 Q. Okay. Anyone else?

24 A. I think -- I think there may have been --

25 well, no. I'm not sure about others.

1 Q. Okay. Is there anything about these topics  
2 that you are not prepared to testify about today?

3 A. I would say that I'm prepared to the extent  
4 that I'm familiar with, you know, the various  
5 components.

6 Q. Okay. Is there anything that you could  
7 have done to prepare for today -- for this  
8 deposition, that you were not given the opportunity  
9 to?

10 A. No.

11 Q. What have you done, if anything, to prepare  
12 for this morning?

13 A. I have reviewed the -- the process that we  
14 used to determine the reduction in force. I've met  
15 with the supervisor, and I have seen the documents  
16 that Fayetteville State provided in response.

17 Q. Okay. Anything else that you did to  
18 prepare for today?

19 A. Well, I met with our attorneys.

20 Q. Okay. And that's -- I don't want to know  
21 what you talked about with them. But anything  
22 else?

23 A. I think that's it.

24 Q. Okay. Are you able to estimate about how  
25 many hours you spent preparing for today?

1 A. Maybe, gosh -- no. Because it's been over  
2 a period of time.

3 Q. Okay. Would you guess it was more than  
4 five hours?

5 A. Well, I think it depends on what's included  
6 -- what you want me to include in that.

7 Q. How about just preparing for this  
8 deposition today. Not necessarily defending the  
9 lawsuit, but preparing for this morning.

10 A. I would say more than five hours. Yes.

11 Q. Okay. More than ten?

12 A. Probably not.

13 Q. Okay. Between five and ten hours. Is that  
14 fair to say?

15 A. We'll -- we'll go with that.

16 Q. Okay. You're clearly not a defense  
17 attorney who keeps track of their hours like second  
18 nature, I'll just put it that way.

19 Did anyone from the University help prepare  
20 you for this testimony?

21 A. Yes.

22 Q. Who?

23 A. So, Angel Powell, and -- specifically from  
24 Fayetteville State University, and Ms. Sandra  
25 Williams.

1 Q. Okay. So are you testifying that you had a  
2 chance to talk with Ms. Williams in anticipation  
3 and in preparation for today's deposition?

4 A. Yes.

5 Q. Okay. I think you answered this question  
6 already, but did you review all of the documents  
7 that you -- that Fayetteville State University has  
8 produced in discovery today or --

9 A. At some stage I have seen those. Yes.

10 Q. Okay. Ms. Faircloth, what is your  
11 education history, just a few personal questions  
12 about yourself.

13 A. I attended the University of North  
14 Carolina. I have a business degree.

15 Q. Was that a Bachelor's, Master's?

16 A. It's a Bachelor's. Yes.

17 Q. Any other education after that undergrad?

18 A. I think I took one or two graduate level  
19 courses.

20 Q. Okay. Where were those?

21 A. UNC Greensboro.

22 Q. Were they just like one-off courses or did  
23 you receive a degree for those?

24 A. I did not receive a degree. No.

25 Q. Did you get any training, like, vocational

1 training since then?

2 A. Training I have had has been with the  
3 organizations I've worked with, whether going to an  
4 outside course or an inside course or learning on  
5 the job.

6 Q. Okay. Have you ever received any  
7 certifications for human resources or employment  
8 law?

9 A. No.

10 Q. Have you ever attended any seminars on  
11 employment law?

12 A. Yes.

13 Q. What seminars were those?

14 A. I don't know that I could name them all,  
15 but I have, you know, been to EEOC courses.

16 Q. Okay.

17 A. Yeah.

18 Q. Okay. Were those courses hosted by the  
19 EEOC or were they -- yeah -- sorry.

20 A. Yeah. So I have been to courses hosted by  
21 the EEOC. I have also been to courses that, you  
22 know, attorneys have put on on the topics of EEO.

23 Q. About how long have you been working in the  
24 human resources field?

25 A. Since January of, I think, 1989.

1 Q. Has it always been for public universities  
2 or the like?

3 A. No.

4 Q. Have you ever worked for a private company  
5 or anything like that?

6 A. Yes.

7 Q. How long did you do that for?

8 A. 27 and a half years.

9 Q. Okay. Was it one company or several  
10 different companies?

11 A. It was one company.

12 Q. Which company was that?

13 A. American Express.

14 Q. So how long have you been employed by the  
15 University here?

16 A. I've been here eight years and a couple  
17 months.

18 Q. Have you had the same position since you  
19 were hired?

20 A. Yes.

21 Q. Have your job duties changed in any way  
22 since you were hired?

23 A. Yes.

24 Q. Significantly?

25 A. Well, yes.



1 Q. How have they changed?

2 A. I would say the most significant change is  
3 that we had a benefits -- employee benefits unit  
4 here.

5 Q. Okay.

6 A. And that is now being handled by the UNC  
7 system and so the relationship is, you know, with  
8 them as opposed to directly with our employees.

9 Q. Okay. Have you always -- in your eight  
10 years with the University, have you always been  
11 involved in reductions in force at the University?

12 A. Yes.

13 Q. Okay. What is your specific role or job  
14 duty as it relates to reductions in force at the  
15 University?

16 A. So, I have since -- I would say that my  
17 involvement in the last five or six years has been  
18 to work with the supervisor or supervisors or  
19 leader designated in an area to determine what the  
20 situation is, review against policy, what needs to  
21 occur, what options they might have, and then help  
22 them put together the packet that has to be  
23 approved at higher levels.

24 Q. Okay. Have the policies regarding  
25 reduction in force changed in the eight years since

1 you've been with the University?

2 A. I would say that there has been one major  
3 change that comes to mind.

4 Q. Okay. What is that?

5 A. It used to be that there has to be a loss  
6 in funding that resulted in a reduction in force  
7 and that is no longer the case.

8 Q. Okay. Any other major changes that you can  
9 recall in your time at the University about the  
10 reductions in force?

11 A. No.

12 Q. Ms. Faircloth, is the University subject to  
13 the state human resources manual issued by North  
14 Carolina State?

15 A. So, yes.

16 Q. Okay. Are you familiar with the human  
17 resources manual?

18 A. Yes.

19 Q. All right. Are you aware that the human  
20 resources manual states that the state is committed  
21 to insuring the administration and implementation  
22 of all human resources policies, practices and  
23 programs are fair and equitable, that state  
24 agencies, departments in universities shall be  
25 accountable for administering all aspects of

1 employment, including hiring, dismissal,  
2 compensation, job assignment, classification,  
3 promotion, reduction in force, trainings, benefits  
4 and any other terms and conditions of employment in  
5 accordance with federal and state EEO laws and  
6 policies.

7 Are you familiar with and aware that it  
8 says that?

9 A. I am not familiar with exactly where that  
10 is located in the materials but it does sound like  
11 it's there. I mean, that is logical to me.

12 Q. It's consistent with your understanding of  
13 the employee -- of the human resources manual;  
14 correct?

15 A. Yeah. Yes.

16 Q. All right. Does the University share this  
17 commitment as set out in this human resources  
18 manual?

19 A. Yes.

20 Q. And does the University agree that it shall  
21 be accountable for administering all aspects of any  
22 reduction in force in accordance with federal and  
23 state EEO laws and policies?

24 A. Yes.

25 Q. All right. Ma'am, if you could, I think

1 you should have Exhibit 2 in front of you, which is  
2 the reduction in force policy?

3 A. Yes.

4 Q. I've got it as it should be about -- it's  
5 marked pages nine through fifteen on the bottom  
6 right. Is that what's in front of you?

7 A. Yes.

8 Q. All right. Ma'am, does this appear to be  
9 the state agency's policy governing reductions in  
10 force effective October 7, 2021?

11 A. Yes.

12 Q. All right. Is the policy that's in Exhibit  
13 2 the policy that governed how defendant was to  
14 conduct any reduction in force among its personnel?

15 A. Yes.

16 Q. And was this Exhibit 2, was that the policy  
17 that was in force at the time of Ms. Bernard's  
18 separation?

19 A. Yes.

20 Q. Okay. Are there any other policies that  
21 were in force at the time of Ms. Bernard's  
22 separation that would have govern how defendant was  
23 to conduct any reduction in force?

24 A. There -- yes. Yes.

25 Q. And what were those?

1 A. There's a reduction in force priority

2 policy. There's also a separation policy.

3 Q. Okay. Walk me through what those are.

4 What -- what's the first one?

5 A. So, the reduction in force priority, it

6 outlines how an employee impacted by a reduction in

7 force has priority over other applicants in certain

8 situations for job openings.

9 Q. Okay.

10 A. If they -- yeah.

11 Q. Okay. Does that govern how a reduction in

12 force is to take place?

13 A. No.

14 Q. Okay. It just deals with the consequences

15 of a reduction in force?

16 A. Right.

17 Q. Okay.

18 A. Yes.

19 Q. What about other -- I apologize. What was

20 the other policy that you mentioned?

21 A. The policy on separation.

22 Q. Okay. And that's dealing with any type of

23 separation with the University?

24 A. It is. It goes through -- it goes through

25 numerous situations but there is a piece in there

1 that could be applicable to a reduction in force.

2 Q. Okay.

3 A. Which is about severance pay.

4 Q. Oh, okay. Does it have anything in there  
5 that governs how a reduction in force is to take  
6 place?

7 A. I do not think so.

8 Q. Aside from those two policies that we just  
9 discussed, are there any other policies that you  
10 can think of that would -- or that are supposed to  
11 govern a reduction in force?

12 A. No.

13 Q. Okay. Does the University agree that the  
14 reduction in force policy that I've handed you as  
15 Exhibit 2, that one of the purposes of that policy  
16 is to insure that employees are treated fairly and  
17 in a non-discriminatory manner when they are  
18 subjected to a reduction in force?

19 A. Yes.

20 Q. Would you agree then that if the University  
21 didn't comply with the policy, it would increase  
22 the chances that a person subjected to a RIF could  
23 be treated unfairly by the University?

24 MR. LINDSLEY: Objection.

25 MR. BUDD: You can still answer the

1 question if you understand it.

2 THE WITNESS: Will you ask again,  
3 please just say it one more time.

4 MR. BUDD: Sure. That's all right.  
5 Would you agree that if the University did not  
6 comply with this policy in Exhibit 2, that it would  
7 increase the chances that a person subjected to a  
8 RIF would be treated unfairly by University  
9 -- could be treated unfairly by the University.

10 MR. LINDSLEY: Same objection.

11 THE WITNESS: I mean, I don't know,  
12 honestly. I mean, it just -- I think it depends on  
13 a lot of things.

14 MR. BUDD: Right. So if it doesn't --  
15 if one of the purposes of the policy is to protect  
16 employees -- correct?

17 THE WITNESS: Yes.

18 MR. BUDD: Yeah. And if the  
19 University does not follow the policy, wouldn't it  
20 follow logically that it would increase the chances  
21 that treated unfairly?

22 MR. LINDSLEY: Objection.

23 BY MR. BUDD:

24 Q. Again, you can still answer it if you  
25 understood the question.

1 A. I think it could. It could.

2 Q. Okay. Thank you.

3 So let's go to specifics on Exhibit 2, if  
4 you could.

5 A. Okay.

6 Q. I have some questions about it, me being  
7 not fully versed in some of this -- some of this  
8 language. I'd love to hear what the University's  
9 understanding of this is.

10 Let's start in section one where it says  
11 policy. Do you see that?

12 A. Yes.

13 Q. So, I want to point you to the third bullet  
14 point here it says abolishment of a position. Do  
15 you see that?

16 A. I do.

17 Q. What does that mean? How is that different  
18 than loss of work or other material changes which  
19 we'll get to next?

20 A. It simply means that the position itself is  
21 going away, the position is not going to be here  
22 anymore. And you're asking me to compare that with  
23 loss of work or shortages?

24 Q. Yes, ma'am.

25 A. It might be -- to me they could be very



1 similar. There could be overlap there.

2 Q. I got you. Okay.

3 A. Yeah.

4 Q. Who decides to abolish a position in this  
5 circumstance?

6 A. So typically that comes from the department  
7 or the division, the higher level division that has  
8 the position.

9 Q. Okay. And so the decision then is made by  
10 the division head?

11 A. It would -- yes. It would go to that level  
12 even if a supervisor at a lower level thought that  
13 should happen, the division head would make the  
14 decision.

15 Q. Okay. Have you ever seen that specifically  
16 happen?

17 A. I have. Yes.

18 Q. Okay. Was that what happened with  
19 Ms. Bernard or is this -- would she fall under  
20 another category here?

21 A. Her situation fell kind of to the last  
22 bullet.

23 Q. Okay.

24 A. The material changes in position or  
25 organization and that lead to abolishing the

1 position.

2 Q. Got you. Okay. So then let's turn to  
3 other material changes in position, duties or  
4 organization.

5 Now, I kind of understand. The example I  
6 could think of when I was working on this was I  
7 could understand why the University does not want  
8 to employ typewriter repairmen -- right -- like  
9 that -- that position is clearly going away.

10 Right? I could see that the University wants to  
11 modify and update it. Right? That's not going to  
12 happen all the time, something that -- so clear.  
13 Right? What -- what, in your experience, falls  
14 under material changes under this policy?

15 A. Right. Right. So, it's possible that a  
16 unit could have new work that requires a different  
17 skill set, different competencies for the  
18 individual or individuals doing the work.

19 Q. I'm sorry to interrupt. So like a new  
20 computer software?

21 A. Maybe. That's possible, I guess.

22 Q. Okay. I'm sorry to interrupt. What else  
23 were you going to say on that?

24 A. No. I mean, that I think that could be an  
25 example, if you need someone with a different

1 skill, in your example to use a new software, you  
2 might need to create a higher level position to get  
3 the right person into that job who has that type of  
4 skill set and can perform those duties.

5 Q. Does the University have any set definition  
6 of what the word material means in this policy?

7 A. Not that I'm aware of.

8 Q. Is it safe to say then that is left up to  
9 the individual supervisors or department heads who  
10 are asking for the RIF?

11 A. I don't know that it would be solely up to  
12 them.

13 Q. Okay.

14 A. It would probably be in consultation with  
15 the office of human resources.

16 Q. And that would be someone like you,  
17 yourself?

18 A. It depends. So --

19 Q. Okay.

20 A. That's -- if -- so, I might have to bring  
21 in other people if they were coming to me to say,  
22 hey, we're going to have a change, et cetera, or  
23 perhaps that would already have been done, and for  
24 example, when we look at changes in duties or in  
25 organization, that often falls into human resources

1 classification and compensation.

2 Q. Okay.

3 A. Just not --

4 Q. Got you.

5 A. -- my area.

6 Q. Okay. Sitting here today, how would the  
7 University define material in this statute -- in  
8 this policy?

9 A. Well, if it was in an organization it would  
10 likely mean that -- I'm saying likely because we  
11 don't have a written specific black and white  
12 definition of that. It would probably mean that  
13 there are fewer positions, different positions,  
14 more positions, different leadership, different  
15 reporting structure. It could mean many things.

16 Q. Okay. Was that the same -- would you say  
17 that's the same definition that was in place at the  
18 time of Ms. Bernard's RIF?

19 MR. LINDSLEY: Objection.

20 BY MR. BUDD:

21 Q. You can answer if you understood the  
22 question.

23 A. I would say that the changes for that  
24 organization were significant.

25 Q. Let me ask it a different way, because what

1 I'm asking is, the definition that you just used  
2 for the term material, I think I asked the question  
3 poorly because what I want to -- I think I asked it  
4 as what's the definition sitting here today. I  
5 really want to know what was the definition on the  
6 day of Ms. Bernard's RIF. Would it be the same  
7 thing?

8 A. So, I don't know that it was a definition  
9 as much as it was going through the details  
10 specific to that budget office.

11 Q. Okay. Let me -- I'm sorry. Let me ask it  
12 one more time.

13 How did the University define material as  
14 it's used in that policy, on the day that  
15 Ms. Bernard's RIF went into effect?

16 A. So, the budget department no longer needed  
17 an accounting technician. They needed a higher  
18 level position that required -- the duties were  
19 different requiring more significant -- not more  
20 significant, but more focus on analysis,  
21 independent decision making, that sort of thing.  
22 So it was a much more analytical role that was  
23 needed.

24 Q. Okay. As I'm asking these questions, I  
25 want to add one more definition to what we were

1 talking about before for -- just, again, for a  
2 clear transcript.

3 When I use the term RIF, you understand  
4 that I'm using it to mean a reduction in force.  
5 Right?

6 A. Yes.

7 Q. You understand that?

8 All right. Let's go look a little bit  
9 further down on section one here. I -- I'd like to  
10 ask you, an agency or University may not use the  
11 RIF process to circumvent the disciplinary process  
12 required to separate or demote an employee for a  
13 disciplinary reason.

14 Do you see that?

15 A. I do.

16 Q. What does that mean? Is a disciplinary  
17 reason the same thing as performance based?

18 A. So disciplinary can be performance,  
19 attendance, behavior. There could be discipline  
20 for any of those categories of things.

21 Q. Okay. So my understanding then is, like,  
22 the way -- this process -- the RIF process is not  
23 intended to get rid of a low performing employee  
24 because they are low performing; correct?

25 A. Correct.

1 Q. Okay. Thank you. If you turn with me to  
2 page ten here then, please. It's just the next  
3 page. Are you there?

4 A. I am.

5 Q. Section three, area analysis for RIF.  
6 There's the -- there's a section relative  
7 efficiency. Are you seeing that?

8 A. I do.

9 Q. All right. How does relative efficiency --  
10 thinking how to ask this question.

11 If the RIF policy is not intended to be  
12 used to get rid of low performing employees, how  
13 does that goal gel with relative efficiency being  
14 considered as a factor for the RIF?

15 A. So, in an area impacted by a reduction in  
16 force, there could be a point where the  
17 employees -- you know, if -- you know, the  
18 employees in the role -- so if there were ten, ten  
19 people who were in a specific job, and there was  
20 really no difference in what they did and we needed  
21 to cut that in half. Okay?

22 Q. Mm-hmm.

23 A. There would be a comparison of those  
24 employees, kind of looking at these factors,  
25 including relative efficiency.

1 Q. Got you. Okay. So it is allowed to be  
2 considered as a factor after the determination that  
3 a RIF needs to occur; correct?

4 A. Correct.

5 Q. And -- okay. But it can't be the impetus  
6 for the RIF?

7 A. That's correct.

8 Q. Got you. Okay. Got you. Okay. Who was  
9 in charge of preparing the employee's overall  
10 performance rating? Do you see in the policy in  
11 section two it says it's based on the most recent  
12 overall performance rating?

13 A. Yes. That is the direct supervisor of the  
14 employee.

15 Q. Okay. Is it allowed to be the same person  
16 who determines whether or not there are other  
17 material changes in the position, duties or  
18 organization?

19 A. Yes. It could be the same.

20 Q. It could be the same person?

21 A. Yes.

22 Q. So it can be the same person who determines  
23 that a RIF is necessary as -- that could be the  
24 same person who issues the direct -- the most  
25 recent and overall performance rating?



1 A. Yes.

2 Q. Okay. So then theoretically a department  
3 head can identify a material change under that  
4 policy then use the performance review that they  
5 wrote as the justification for targeting someone in  
6 a RIF?

7 MR. LINDSLEY: Objection.

8 MR. BUDD: Again, you can answer if  
9 you understood the question.

10 THE WITNESS: So, ask it again  
11 because -- yeah. Just ask it one more time.

12 MR. BUDD: Sure. I'll ask it this  
13 way. Theoretically a department head could  
14 determine that a RIF is necessary then also use the  
15 performance review they just wrote as justification  
16 for targeting that person in a RIF?

17 MR. LINDSLEY: Objection.

18 THE WITNESS: I would say that if a  
19 RIF had already been planned, that probably a  
20 performance evaluation would not be completed after  
21 that.

22 BY MR. BUDD:

23 Q. But what about the performance evaluation  
24 prior to the RIF? They could have been the ones to  
25 draft that performance evaluation; correct?

1 A. Yes. That could happen.

2 Q. Moving on to section three right below  
3 that, actual or potential adverse impact.

4 Are you there with me?

5 A. Yes.

6 Q. I'd like to ask you about the section where  
7 it says all decisions concerning reduction in force  
8 must be analyzed to determine their impact on  
9 agency utilization goals based on race and sex to  
10 avoid adverse impact in violation of section 4  
11 point -- 4 D of the uniform guidelines on employee  
12 selection procedures as applied to selection rights  
13 for separation through RIF?

14 Did I read that correctly?

15 A. Yes.

16 Q. Do you know why age is not included in  
17 here?

18 A. I do not know.

19 Q. I think we mentioned or does the state --  
20 when I asked you about the state human resources  
21 manual, it mandates employees to comply with and  
22 insure that age is a protected category under human  
23 resources policies; correct?

24 A. Yes.

25 Q. Okay. Does the University consider itself

1 to be outside of the scope of federal laws

2 preventing age discrimination?

3 A. No.

4 Q. Okay. So would you agree that age should

5 be included as -- when evaluating the actual or

6 potential adverse impact under policy -- under area

7 three in this policy?

8 A. Yes.

9 Q. Okay. Let's turn the page to page eleven

10 then, please. Just let me know when you get there.

11 A. I'm there.

12 Q. Okay. Section four where it says avoiding

13 a RIF. A decision to implement a RIF must be

14 reached only after the systematic considerations of

15 actions designed to avoid the layoff.

16 Did I read that correctly?

17 A. Yes.

18 Q. What does systematic consideration mean to

19 the University?

20 A. In a nutshell it means that we would look

21 for other options other than simply going directly

22 to the reduction in force.

23 Q. Is there a set -- is there a set guideline

24 or policy that would qualify as systematic

25 consideration of actions?

1 A. So typically, yes, I would say there is a  
2 structure that's followed normally, at least in  
3 practice.

4 Q. Okay. Can you describe that process for  
5 me.

6 A. Sure. So, if we -- you know, if we know  
7 that a position is going to be eliminated or -- you  
8 know, and may be subject to a RIF, we're looking --  
9 if there's a person in the job, we're looking to  
10 see if we can keep that person whole by moving them  
11 into a comparable position. So, we look to see, is  
12 there an open position that's the same as what  
13 they're in, basically, same title, same job family,  
14 same pay, and for the state positions such as the  
15 State Human Resources Act, you know, also we'd be  
16 looking to see if the position title is there plus  
17 the competency level that that person is in and  
18 that would be considered comparable.

19 Q. Anything else that the University is  
20 supposed to do when considering these things?

21 A. Right. So, we could -- you know, we could  
22 also, within that same job family look to a lower  
23 level position and then they have the RIF priority  
24 in hiring, so we make sure the employee, once  
25 they're notified, that they're aware of that as

1 well, and, you know, we just make the jobs -- make  
2 sure they know where to find the jobs that are  
3 available. We remain open to help them if we find  
4 anything for them, before their last day. You  
5 know, that's essentially what we do.

6 Now, we would also look beyond and compare  
7 them to people who are in that same job, job  
8 family, to see if anyone there is a probationary  
9 employee or a temporary employee, so they don't  
10 have career status yet, because if the person being  
11 impacted by the RIF could learn that job, if it's  
12 the same job title, it might still have different  
13 duties, so if they could learn that job, then we  
14 would -- we would separate the person who is not  
15 career status or who is temporary in order to have  
16 a job for the person that would be impacted by the  
17 RIF otherwise.

18 Q. Got you. Anything else in your experience  
19 that the University does to engage in systematic  
20 consideration of actions to avoid a RIF?

21 A. No.

22 Q. Okay. I think if you look down a little  
23 bit further in that policy, it says these actions  
24 may include but are not limited to the elimination  
25 of vacant positions. I guess I'm just going to ask

1 you for each of these, have you ever seen the  
2 University do this, do this action.

3 So have you ever seen them eliminate a  
4 vacant position?

5 A. Well, I have seen vacant positions  
6 eliminated but are you -- kind of clarify.

7 Q. To avoid a RIF.

8 A. I have not.

9 Q. Has the University ever reduced  
10 non-personnel related expenses to avoid a RIF?

11 A. Not that I'm aware of.

12 Q. Has the University ever placed an employee  
13 in a vacant position for which the employee  
14 qualifies. I think that's what you talked about  
15 earlier.

16 A. Yes. We have.

17 Q. Okay. And has the University ever  
18 retrained employees to facilitate placement in  
19 other positions at the agency or University?

20 I think you mentioned retraining earlier,  
21 but is there anything more formal than that?

22 A. I'm not immediately thinking of an example.

23 Q. Okay. Are there any other actions that  
24 you've seen the University undertake to avoid a RIF  
25 that are not listed there?

1 A. No.

2 Q. Big picture about Exhibit 2. Who at the  
3 University is in charge of insuring the  
4 University's compliance with the policy?

5 A. It would be the head of human resources.

6 Q. Anyone else in charge of insuring  
7 compliance?

8 A. The chancellor.

9 Q. Okay. Anyone else?

10 A. I think the legal affairs office at times.

11 Q. Okay. What do each of those individuals do  
12 to insure the compliance with this policy?

13 A. With the RIF policy specifically?

14 Q. Yes, ma'am.

15 A. Okay. So, the head of human resources is  
16 aware of reduction in forces that are proposed,  
17 available for consultation, involvement as needed,  
18 refuse the plan. There's a plan that has to be put  
19 together with the details of what's happening, why  
20 are we doing a RIF, who is impacted, who's not  
21 impacted, the kind of demographics analysis that  
22 has to be done. There's a checklist and then  
23 there's the severance information. So, the head of  
24 human resources reviews that and signs it and  
25 they're reviewing in conjunction with the policy

1 then taking it to the chancellor to review it, of  
2 course at a very high level because that signature  
3 is required as head of agency. We inform the legal  
4 office and -- but I don't know that they have gone  
5 through and reviewed all of that documentation in  
6 the past.

7 Q. Okay. So if I could just summarize what I  
8 think I just heard -- and correct me if I'm wrong  
9 on any of this -- the head of human resources at  
10 the University is supposed to review the proposed  
11 RIF, sign off on it and present it to -- I think  
12 you said the chancellor --

13 A. Correct.

14 Q. -- for their signature but you're not  
15 entirely sure at what level of review the  
16 chancellor normally gives to this?

17 A. Right.

18 Q. Is that -- okay. And it's presented to  
19 legal counsel but their approval is not necessary  
20 for a RIF to go forward; correct?

21 A. That's correct.

22 Q. Okay. Are the approvals of the chancellor  
23 and the human resources head required for the RIF  
24 to proceed?

25 A. Yes.



1 Q. Okay. Is there anything aside from the RIF  
2 policy that the chancellor and the human resources  
3 head are supposed to review when evaluating this --  
4 any potential RIF?

5 A. No.

6 Q. Okay. Ma'am, if you don't mind I think now  
7 is probably a decent time to just take a quick  
8 break, stretch our legs, go off the record for five  
9 minutes or so.

10 (A brief recess was taken.)

11 BY MR. BUDD:

12 Q. Ms. Faircloth, we just took a very short  
13 break. Is there anything you'd like to change in  
14 any of your previous answers to the questions I've  
15 asked?

16 A. Well, if I could, I'd like to maybe clarify  
17 a couple of points.

18 Q. Please do.

19 A. You had asked about who -- I think you  
20 asked who in the University has reviews and  
21 approves RIF. I don't know if you want me to kind  
22 of go beyond here on this campus, because it does  
23 go outside of the campus.

24 Q. I would love to know everybody who's  
25 approved them or reviewed them.

1 A. Okay. So for clarification, our legal  
2 office does review -- and it's not just the policy,  
3 it's the RIF plan, which is all the documentation  
4 we have to prepare, they're thinking about that, to  
5 make sure that we are following the policy, being  
6 fair, et cetera. And then the chancellor signs it  
7 and then it is sent up to the UNC system human  
8 resources office for their review and approval.

9 So that's kind of how that happens. But  
10 it's that entire set of RIF documentation. So it's  
11 the plan, it's an adverse impact analysis, the  
12 checklist, the severance payment request. Those  
13 things.

14 Q. Okay. On that point then, are you aware of  
15 what the State UNC system does to review a  
16 potential RIF or a proposed RIF?

17 A. No.

18 Q. Okay. Do you know if they are supposed to  
19 look at anything beyond the paperwork that  
20 Fayetteville State presents to them?

21 A. I don't know.

22 Q. Okay. Anything else that you'd like to add  
23 or change in your -- to your previous testimony?

24 A. I don't think so.

25 Q. Okay. Thank you, ma'am.

1 Ma'am, do you have Exhibit 3 in front of  
2 you? Those are the defendant's responses to  
3 plaintiff's first set of interrogatories and  
4 request for production of documents.

5 A. Yes.

6 Q. I think, if you look on page -- second to  
7 last page in that packet, it has your signature  
8 with your note -- your notarized signature?

9 A. Yes.

10 Q. All right. Is there anything in these  
11 discovery responses that is incorrect or needs to  
12 be revised or is incomplete? And if you need to  
13 take a minute, please take your time.

14 MR. LINDSLEY: Joe, just for the  
15 record, I'll object just on the basis that some of  
16 these have been supplemented since these answers  
17 were provided.

18 MR. BUDD: Yeah. I apologize. Let's  
19 focus on the interrogatory responses because I  
20 don't think you've supplemented the interrogatory  
21 responses. Is that correct?

22 MR. LINDSLEY: I believe that's  
23 correct. Although some may, by way of additional  
24 document production, have been addressed but go  
25 ahead. Ask your questions and we'll address each

1 one.

2 MR. BUDD: Okay. I -- honestly, for  
3 right now, all I'd like her to do is just -- if  
4 there's anything additional that needs to be  
5 changed -- actually let's just go off the record  
6 for a second.

7 (Discussion off the record.)

8 MR. BUDD: We can go back on then.

9 BY MR. BUDD:

10 Q. All right. Ms. Faircloth, I think you've  
11 just taken the last few minutes and reviewed  
12 Exhibit 3 to this deposition.

13 Is there anything to your knowledge that  
14 needs to be changed, amended, added to or revised  
15 in any way?

16 A. Not to the best of my knowledge. No.

17 Q. Okay. All right. You can put that to the  
18 side then. I apologize for a bit of housekeeping  
19 on that front.

20 If you could then pull up Exhibit 4,  
21 please. Let me know when you have that.

22 A. What would it be?

23 Q. It is -- the first page is an email dated  
24 February 10th, 2023 from Sandra Williams to Sheila  
25 Wright Zeigler.

1 A. Yes.

2 Q. It should be a thirteen page document.

3 A. Yes.

4 Q. Okay. Does this appear to be an email  
5 chain and attachments produced by defendant in this  
6 matter with the first email being dated January  
7 24th, 2023 from Sandra Williams to Sheila Wright  
8 Zeigler?

9 A. Yes.

10 Q. And on the first page -- I hate -- I'm  
11 sorry if you're flipping back and forth -- the  
12 first page it says Kate Faircloth.

13 Do you remember receiving this email chain  
14 back in February, 2023?

15 A. I do not remember this, but clearly I was  
16 copied on it.

17 Q. Okay. All right. Now, to continue  
18 flipping back and forth. We're going to go from  
19 back to forward on this exhibit, if you don't mind.

20 A. Okay.

21 Q. So if you turn to the last page, page  
22 thirteen. Let me when know when you're there.

23 A. Okay. I'm there.

24 Q. Does this appear to be a chart, like a flow  
25 chart, an organization chart?

1 A. It is.

2 Q. All right. What is this organization  
3 chart?

4 A. This was the current state of the budget  
5 office organization on March 1st, 2023.

6 Q. Okay. Does this chart -- what do the  
7 proposed -- do you see how some of those boxes  
8 there's proposed in bold capital letters?

9 A. Yes.

10 Q. What does it mean for one of those boxes to  
11 have proposed in it?

12 A. So, it's a proposed position that doesn't  
13 exist at that time. It could be a new position.  
14 It could be a position that's being changed.

15 Q. Okay.

16 A. Or reclassified is a term that we use.

17 Q. Got you.

18 So is it safe to say that looking at this  
19 chart on March 1st, 2023, as of March 1st, 2023,  
20 there were four proposed changes to four different  
21 positions in the budget office?

22 A. Yes.

23 Q. There are the two new budget analyst  
24 positions; correct?

25 A. Yes.

1 Q. There's a proposed administration support  
2 specialist position. Is that a new position or a  
3 re-org of a position?

4 A. I'm not sure.

5 Q. Okay. Is there any way to find out the  
6 answer to that question?

7 A. I can find out. It has a position number  
8 already so it's possible that it might have just  
9 been established or it could have been there and,  
10 you know, they made a change to it and maybe that's  
11 why it's in yellow or they're proposing a change to  
12 it. So I would have to -- I would have to look  
13 that up.

14 Q. Okay. Thank you. And then what was  
15 changed -- if you know, what was changed for the  
16 associate VC for budgets, financial planning and  
17 analysis position?

18 A. I believe they were proposing a position  
19 title change from assistant vice chancellor to  
20 associate vice chancellor.

21 Q. Okay.

22 A. Which brings it to a little bit higher  
23 level.

24 Q. It's a promotion?

25 A. Yes.

1 Q. Okay. Does this chart depict anything  
2 happening to Ms. Bernard's position?

3 A. To me, it appears -- and I think this is  
4 what they were trying to convey -- that the  
5 accounting technician position was filled at that  
6 point on March 1st but that position would be  
7 basically abolished in lieu of this proposed budget  
8 analyst one position.

9 Q. Okay. What in the chart suggests to you  
10 that that was the intention?

11 A. It's not in the chart --

12 Q. Okay.

13 A. -- as much as it's in the other documents.

14 Q. Okay. Thank you. According to this chart,  
15 is the -- and this just might be poor graphic  
16 design. Right? Is the administration support  
17 specialist above or below accounting technician or  
18 is it separate and apart?

19 A. Can you ask that a different way?

20 Q. Sure. And again, I'm -- I'm seeing -- this  
21 is where the Zoom deposition has its limitations  
22 because I would be pointing to you. It looks like  
23 there is a line that goes to the shadow of the  
24 administration support specialist box and I can't  
25 tell if that's just supposed to go around the



1 administration support specialist box or if it's  
2 supposed -- or if the accounting technician is  
3 posed to report to the administration support  
4 specialist.

5 A. Got it. Okay. So, the administrative  
6 support specialist would report to Ms. Williams.  
7 Okay? And this accounting technician position  
8 would also report to Ms. Williams. So it's going  
9 around and bringing all of the positions across the  
10 bottom and the admin support specialist all  
11 reporting -- each reporting directly to  
12 Ms. Williams.

13 Q. Got you. Okay. Thank you. I have  
14 Googled -- and be careful what you Google -- right  
15 -- but I have Googled other administration support  
16 specialist position openings at Fayetteville State  
17 University and they all appear to be clerical  
18 secretarial receptionist type work.

19 Would you say that's a fair  
20 characterization of the administration support  
21 specialist role?

22 A. No, not without looking each individual  
23 position description.

24 Q. Okay.

25 A. I would have to look at the details.

1 Q. Okay. Do you know what the administration  
2 support specialist role was supposed to be in the  
3 budget office?

4 A. I think it was providing clerical support  
5 to Ms. Williams but again, there are probably quite  
6 a few details in that position description that  
7 would clarify.

8 Q. Okay. Okay. Thank you. Ms. Bernard was  
9 not supposed to report to that -- the  
10 administration support specialist; correct?

11 A. No.

12 Q. Okay. All right. So then let's flip to --  
13 let's flip ahead several pages. Go to page six if  
14 you could.

15 A. Okay.

16 Q. Okay. Very brief question about this. It  
17 says somewhere in the first full paragraph there,  
18 division of business and finance slash budget  
19 office is requesting to reclassify current position  
20 accounting technician advanced to budget analyst  
21 two due to change of duties and responsibilities.

22 I think I modified the grammar a little bit  
23 but is that essentially what it says there? It's  
24 about the middle of the first paragraph.

25 A. Okay.

1 Q. Did I read that and represent that fairly?

2 A. Yes.

3 Q. Okay. Was Ms. Bernard an accounting  
4 technician advanced?

5 A. No. She was not.

6 Q. Okay. So was this reclassification, was  
7 this explicitly -- this was not explicitly for  
8 Ms. Bernard, was it?

9 A. No.

10 Q. Okay. So then let's move to page three  
11 please. Let me know when you're there.

12 A. Okay.

13 Q. I'm looking at the email dated February  
14 7th, 2023, from Sandra to Sheila Wright Zeigler.

15 Do you see it?

16 A. I do. Yes.

17 Q. All right. Specifically, I want to -- I  
18 highlighted, review revised job description for  
19 position 000090 to -- and reclassify as budget  
20 analyst one. That was Ms. Bernard's position;  
21 correct?

22 A. That is correct.

23 Q. Okay. Is there a job description in this  
24 Exhibit 4 to reclassify as budget analyst one?

25 A. No. I do not see one.

1 Q. Okay. Are you aware of any conversations  
2 or discussions before February 7th, 2023, about  
3 reclassifying Ms. Bernard's position?

4 I will represent to you that upon my review  
5 of the records -- and I might have missed something  
6 -- upon my review of the records provided by the  
7 University this to me is the first reference  
8 chronologically in writing of a reclassification of  
9 Ms. Bernard's position.

10 Are you aware of anything prior to this  
11 that I might have missed or was not a party to,  
12 that addressed reclassification?

13 A. I do not recall being aware of anything  
14 prior to this.

15 Q. Okay. Do you know, then, what Ms. Williams  
16 was following up on in this email then?

17 A. I do not.

18 Q. Would Ms. Williams be the best person to  
19 ask about that question?

20 A. Probably yes, but I would say based on, you  
21 know, the documents and this org chart, that she  
22 probably had been working with Ms. Zeigler in  
23 discussing her needs for the organization, but I  
24 was not aware, you know, sooner, to the best of my  
25 knowledge.

1 Q. Okay. Let's go to page two then, please.

2 Just the next page. This is three days later,  
3 February 10th, at 9:36. It's the email on the  
4 bottom. It says good morning Sheila. I would like  
5 to cancel the request to reclassify the position.

6 Did I read that correctly?

7 A. Yes.

8 Q. Does that mean that as of February 10th the  
9 University had decided to keep Ms. Bernard in her  
10 account technician role?

11 A. I'm just reading the prior emails.

12 Q. Sure. Take your time.

13 A. So, I'm not sure. I don't know what  
14 this -- you know, what was behind her saying that.

15 Q. Okay. So, you think Ms. Williams would be  
16 the best person to ask specifically about that  
17 question?

18 A. I think so.

19 Q. What's the difference to the University  
20 between reclassifying an existing position and  
21 creating a new position?

22 A. So, when you reclassify, you already have a  
23 job and you are going to modify it in some way. It  
24 could be a title change, change of duties. I would  
25 say a competency level change for an SHRA position

1 but you wouldn't see a competency level change  
2 unless the duties had changed and supported a  
3 competency level change. So that's kind of  
4 reclassify.

5 Establishing a new position is the position  
6 doesn't exist today, it's not funded yet, and  
7 you're starting with a brand new position  
8 description.

9 Q. If I may ask this: From what you just  
10 testified to, can you reclassify a position without  
11 essentially changing the original position?

12 A. I don't know why there would be a purpose  
13 to reclassify a position.

14 Q. Okay.

15 A. Well, you could if, for some reason -- even  
16 if you change a job title, that's a change. Right?

17 Q. Right.

18 A. So I would say there has to be some change  
19 to warrant going through a reclassification  
20 process.

21 Q. It abolishes the old job and replaces it  
22 with a new job; correct?

23 A. In reclassification?

24 Q. Yes, ma'am.

25 A. Not really.

1 Q. Oh, okay.

2 A. That's not usually the language that we  
3 would use. The position still exists. It's a  
4 position number that's funded. Okay? And you're  
5 making adjustments to the position. Still keeps  
6 the same position number in a reclassification.

7 Q. Got you.

8 Is there anything about creating a new  
9 position that requires the abolition or -- let's  
10 just say abolition of another position?

11 A. So there's not a requirement unless funding  
12 is needed and you no longer need the previous  
13 position.

14 Q. Got you. Okay. Do you see where I'm  
15 confused here, though, in the sense that we've gone  
16 from reclassifying Ms. Bernard's position, which  
17 understandably was her position. Right? And we've  
18 gone from canceling that request to creating -- to  
19 requesting a new position entirely, which in my --  
20 my understanding means that Ms. Bernard's position  
21 is remaining untouched through these emails;  
22 correct?

23 MR. LINDSLEY: Objection.

24 MR. BUDD: Is there anything in these  
25 emails aside from what we've already discussed that

1 addresses what's going to happen to Ms. Bernard's  
2 position?

3 MR. LINDSLEY: Objection.

4 THE WITNESS: So, there's not -- it's  
5 not clear and directly written in the  
6 communications but the February 10th, 2:56 p.m.  
7 email from Sheila Wright Zeigler to Ms. Williams,  
8 she says it's about establishing a budget analyst  
9 one, so what -- what had happened was the  
10 University system, which kind of controls what we  
11 have the authority to do here with establishing  
12 positions, classifying positions, that sort of  
13 thing, there was a new -- let me think how to say  
14 it. Positions that -- certain positions, not all  
15 positions, in audit business and finance had moved  
16 into a new classification that was exempt from the  
17 State Human Resources Act.

18 BY MR. BUDD:

19 Q. Okay.

20 A. And Ms. Williams had tried to reclassify  
21 the accounting technician, is my understanding, and  
22 the UNC system said no. You know. Not under the  
23 rules that we have today, because those  
24 positions -- a budget analyst and accounting tech  
25 are so significantly different that you need to



1 establish that budget position and conduct a  
2 competitive search.

3 Q. Got you. Okay. I think I understand that.

4 Okay. At what point in time had the University or

5 Ms. Williams in particular decided that

6 Ms. Bernard's position was going to be eliminated?

7 A. So, I don't know the exact date, but --

8 Q. Okay.

9 A. The budget office, in conjunction with the  
10 vice chancellor of business and finance had looked  
11 at how the budget offices were set up at other  
12 campuses in the UNC system and reviewed the  
13 positions and I think they had moved into an  
14 environment where more was expected and the other  
15 campuses had recognized that and were operating  
16 with budget analysts and not accounting  
17 technicians.

18 So, our budget office, business and finance  
19 division felt that was the direction to go.

20 So at some point they decided that they  
21 needed three budget analysts and did not need  
22 accounting technicians.

23 Q. Okay. When -- and your testimony is you  
24 don't know when that decision was made?

25 A. I don't think I know the exact date.

1 Q. Can you guesstimate or approximate when  
2 that decision was made?

3 A. I would guesstimate that it started -- the  
4 decision process started in the fall of 2022.

5 Q. Okay. So approximately, like, five months  
6 before these February emails?

7 A. I would say three to five months. Yes.

8 Q. Okay. Do you know if there's anything in  
9 writing about that decision making process and that  
10 determination?

11 A. I do not know.

12 Q. Has the University conducted a search for  
13 any documents regarding that decision making  
14 process?

15 A. I think we produced the documents for the  
16 class -- for establishing the position, but -- the  
17 budget analyst position, which it could be in the  
18 justification, because that's part of that process.

19 Q. Okay. If I represent to you that I did not  
20 see anything -- I did not see anything regarding a  
21 big picture conversation of reorganizing the budget  
22 office in the document production.

23 Did I miss any documents regarding those  
24 conversations?

25 MR. LINDSLEY: Well, objection.

1 BY MR. BUDD:

2 Q. Do you know if any documents about a bigger  
3 picture reorganization that you just described, do  
4 they exist?

5 A. Beyond the organizational chart that you  
6 have included here, I don't know.

7 Q. Okay. All right. Would the University  
8 have any objection to conducting further search for  
9 documents regarding conversations about the --  
10 about the reorganization of the department, the  
11 division, in that sense?

12 A. No. I mean, I think we can -- we can see  
13 what's there, but I will say that, you know, lots  
14 of times when these kind of things happen it's  
15 conversation in a room and it's not --

16 Q. Yeah.

17 A. -- in writing.

18 Q. Understood.

19 A. But certainly I can look.

20 Q. Understood.

21 If you could just turn to the first page of  
22 Exhibit 4, please.

23 A. Okay.

24 Q. Let me know when you get there.

25 A. I'm there.

1 Q. Very first email, February 10th, 2023 at  
2 3:27 email. Sandra writes hopefully we'll get it  
3 right this time. Looks like there's supposed to be  
4 an emoji or something there. Do you know what was  
5 wrong the first couple of times? Do you know what  
6 she's referring to there?

7 A. I don't absolutely know but if you look at  
8 the email just prior, she's saying I no longer want  
9 to reclassify any current positions. She's  
10 requesting to establish a new position which she  
11 was doing after receiving the feedback from  
12 Ms. Sheila Wright Zeigler that it would need to be  
13 established as an EHRA position and not SHRA.

14 Q. Okay. Thank you. You can put Exhibit 4 to  
15 the side.

16 I'm going to turn to Exhibit 5 now if you  
17 can get that.

18 A. Reduction in force plan?

19 Q. Yes, ma'am. Dated March 23rd.

20 A. Okay.

21 Q. So does this exhibit appear to be the March  
22 23rd, 2023 reduction in force plan?

23 A. Yes.

24 Q. And this is the reduction in force plan  
25 that resulted in the elimination of Ms. Bernard's

1 job?

2 A. Yes.

3 Q. All right. Start in the first paragraph,  
4 if you could, abolishing the accounting technician  
5 position. I think I've asked this question but  
6 again, just for the sake of the record, do you know  
7 when it became the plan to abolish Ms. Bernard's  
8 position?

9 A. So, I was pulled into the conversation in  
10 February. So sometime in February, 2023.

11 Q. Okay. And were those conversations in  
12 person as well or over the phone or verbal?

13 A. I remember speaking with Ms. Williams in  
14 person.

15 Q. Okay.

16 A. We may have followed up by phone, but it's,  
17 you know, a very sensitive matter, so more than  
18 likely --

19 Q. Understood.

20 A. -- in person.

21 Q. Understood. Okay. So let's go down to the  
22 criteria. All right? So this list of criteria is  
23 the same list of criteria that's included in the  
24 RIF policy I think in Exhibit 2; correct?

25 A. Yes.

1 Q. Type of appointment, relative efficiency,  
2 actual or potential adverse impact on the diversity  
3 of the work force and length of service; correct?

4 A. Yes.

5 Q. All right. So, for each of these factors  
6 I'm going to ask you kind of the same questions.  
7 Okay? Let's start with type of appointment. Did  
8 this have any role in defendant's decision to  
9 eliminate Ms. Bernard's position? I'm not asking  
10 did they -- did they consider it, because you had  
11 to consider it, but did this have any role or play  
12 any part in defendant's decision to eliminate the  
13 position?

14 A. The position itself, no.

15 Q. Okay. In fact, did the type of appointment  
16 that she had, didn't that weigh in Ms. Bernard's  
17 favor as a permanent employee?

18 A. Well, we have -- so there was only one  
19 position --

20 Q. Right.

21 A. -- subject to reduction in force. So,  
22 there was not a -- you know, her -- any of this  
23 really weighing in her favor, it was that specific  
24 position. So there was not a comparison really.  
25 Yeah. So go ahead.

1 Q. The position and Ms. Bernard's role in that  
2 position, if -- following the criteria set out in  
3 the RIF policy, type of employment should have  
4 weighed in Ms. Bernard's favor; correct?

5 A. Correct. Yes.

6 Q. Okay. All right. Let's skip ahead because  
7 I'm going to get back to relative efficiency.  
8 Right?

9 A. Mm-hmm.

10 Q. Actual or potential adverse impact on  
11 diversity of the work force.

12 I think you testified earlier that age  
13 should have been and was a factor to be considered  
14 in this; correct?

15 A. Yes.

16 Q. So Ms. Bernard's age should have been a  
17 positive factor in these criteria; correct?

18 A. Well, there -- you know, there was only one  
19 position. It turned out there was only one  
20 position. So age became not relevant really,  
21 because it's just one person.

22 Q. Right. But I'm asking, again, if they had  
23 followed -- if the University had followed the  
24 criteria and then this would have weighed in her  
25 favor; correct?

1 MR. LINDSLEY: Objection. Injuries.

2 THE WITNESS: I don't -- I would say  
3 that it doesn't -- you know, it's not favorable or  
4 unfavorable to her, because we didn't really need  
5 to put any emphasis on that. It was not weighted  
6 heavily because it was that position that she was  
7 in and there was not -- there was not another place  
8 to put her.

9 BY MR. BUDD:

10 Q. Okay. Let's go just if you could, go to  
11 the second page here. We got the composition of  
12 the effected work force; correct?

13 A. Yes.

14 Q. But your testimony is that none of these  
15 people were effected because it was just  
16 Ms. Bernard; correct?

17 A. Yes.

18 Q. Okay. I think, my understanding of this  
19 chart is that these are all of the accounting  
20 technicians in the division of business and  
21 finance; correct?

22 A. That is correct.

23 Q. All right. My, again, reading of this is  
24 that Ms. Bernard was the second oldest employee --  
25 second oldest accounting technician. Am I reading



1 that correctly?

2 A. That does look correct. Yes.

3 Q. Okay. So given that she was the second  
4 oldest accounting technician, wouldn't that have  
5 provided her some level of consideration under  
6 actual or potential adverse impact on the diversity  
7 of the work force criteria?

8 A. So, not in this case. And if I can  
9 clarify.

10 Q. Please.

11 A. So, the reason we prepared -- we followed  
12 this template, this is a template process. The  
13 reason we looked across the division of business  
14 and finance and not just in the budget office when  
15 we did this analysis, the main reason was to  
16 determine if we had someone out there who was  
17 temporary or probationary and, in which case we  
18 would -- oh, if we had a vacant position we were  
19 looking for vacancies, too, to see if we should by  
20 policy separate another individual because they  
21 were probationary, you know, or not career status,  
22 probationary or temp -- temporary.

23 So that's really the purpose in why we did  
24 this. We said well we don't want to just look at  
25 the budget office, we want to help her if we can,

1 let's look across -- we actually looked across the  
2 whole campus. Turns out all accounting technicians  
3 are in the division of business and finance so we  
4 just put them all in.

5 Q. Okay. Okay. What I'm -- okay. I  
6 appreciate that. I think -- I don't think I've  
7 gotten an answer to the question though that I'm  
8 asking, which is if the -- if the University was  
9 supposed to consider all four of these criteria in  
10 doing the RIF, I'm kind of thinking it as a  
11 positive and negative for each of these criteria.  
12 Ultimately, if Ms. Bernard, would her age have been  
13 a positive or negative for this criteria?

14 MR. LINDSLEY: Objection.

15 THE WITNESS: Yeah. I see it as  
16 irrelevant under the circumstances.

17 MR. BUDD: Are you saying that the  
18 University did not follow this criteria and did not  
19 give this consideration?

20 THE WITNESS: It's there because we  
21 have to look at it, but because it was just one  
22 position that was -- you know, it became not  
23 important.

24 MR. BUDD: Okay. If it had been  
25 considered would it be positive or negative in her

1 favor?

2 MR. LINDSLEY: Objection.

3 THE WITNESS: And that's -- yeah. I  
4 mean, it's hard to say, because what -- what would  
5 those circumstances have been.

6 MR. BUDD: Okay.

7 THE WITNESS: So is she in a protected  
8 class? So yeah. But it's not relevant in this set  
9 of circumstances.

10 MR. BUDD: Okay. But that's because  
11 she was the only one targeted by this RIF?

12 THE WITNESS: Correct.

13 MR. LINDSLEY: Objection.

14 BY MR. BUDD:

15 Q. Okay. Last category length of service.  
16 Again, going by that chart on page two, Ms. Bernard  
17 was the longest tenured accounting technician at  
18 the University; correct?

19 A. Yes.

20 Q. Okay. Is it the purpose of the criteria to  
21 favor longer tenured employees versus shorter  
22 tenured employees?

23 A. It depends on the circumstances and the  
24 other factors.

25 Q. But the University is supposed to consider

1 the length of an employee's service when making  
2 these decisions; correct?

3 A. That is one of the factors.

4 Q. Okay.

5 A. If you're looking more than one position.

6 Q. Okay. Is it your testimony that because  
7 she was the only employee targeted by this RIF and  
8 the only position targeted by this RIF, that the  
9 criteria that are listed here are more -- are not  
10 relevant to the decision -- the University's  
11 decision?

12 MR. LINDSLEY: Objection.

13 THE WITNESS: So, this information is  
14 laid out because we're required to complete this  
15 template. We could have completed it with just  
16 Ms. Bernard's information. We included everyone  
17 because we were looking to see if there was another  
18 position that she should go into.

19 MR. BUDD: Okay. Right below those  
20 four criteria it says relative efficiency was a  
21 critical factor in the evaluation process.

22 What does that mean?

23 MR. LINDSLEY: Sorry, Joe. Where are  
24 you looking?

25 MR. BUDD: Sorry. It's the bottom of

page 20 and the top of page 21.

MR. LINDSLEY: Okay.

BY MR. BUDD:

Q. Do you see it?

A. Yeah. So I think we're saying that performance was weighted more heavily than the other factors but again, we couldn't just reclassify her into the position. There was a new position, she needed to apply for it if she was interested.

Q. Was Ms. Bernard's performance in the accounting technician role relevant to her eligibility for this new position?

A. No.

Q. Was it considered for her eligibility for that new position?

A. It was not, because she did not apply for that new position.

Q. Okay. So, let me ask you this: I think -- let's go back to your discovery responses. That's question number three; correct? Exhibit Number 3. Do you have that in front of you?

A. What page is it?

Q. Let's go to page ten because I'm going to ask you about question thirteen.

1 A. Okay.

2 Q. Are you with me?

3 A. I'm on page ten.

4 Q. Okay. So page -- so question thirteen, I  
5 asked you -- I asked the University to identify any  
6 and all vacant positions with the defendant for  
7 which the plaintiff qualified at the time of the  
8 termination of her employment.

9 Do you see that?

10 A. Yes.

11 Q. And your attorney objected but then without  
12 any objections upon information and belief none.

13 So in discovery responses the University  
14 has said that there were no eligible -- there were  
15 no positions that she qualified for. Does that  
16 include the budget analyst position one that is  
17 being created?

18 A. Can you just repeat your question one more  
19 time?

20 Q. Sure. My reading of your answer in  
21 question thirteen is that there were no positions  
22 available to her at the time. Is that a fair  
23 assumption -- fair interpretation of your answer?

24 MR. LINDSLEY: Objection.

25 )))

1 BY MR. BUDD:

2 Q. There were no vacant positions at the time  
3 of plaintiff's termination of her employment that  
4 she was qualified for.

5 A. There were no vacant accounting technician  
6 positions, which is the job family, the accounting  
7 job family where we would have looked.

8 Q. Okay.

9 A. There may have been positions that she was  
10 qualified for. We made the postings, the job  
11 openings advertisements available to her. But the  
12 budget positions, budget analyst positions, were  
13 not yet posted. I don't think those were through  
14 the establishment process yet.

15 Q. Okay. Looking right below, fourteen.  
16 Defendant attempted to identify vacant positions  
17 and invited plaintiff to apply for the new budget  
18 analyst position which plaintiff did not do.

19 Did I read that correctly?

20 A. I am --

21 Q. That's all right. Interrogatory number  
22 fourteen.

23 A. Okay.

24 Q. I have the benefit of highlighting the  
25 parts that I want to ask.

1 A. Okay.

2 MR. LINDSLEY: It's on page ten of  
3 that document.

4 MR. BUDD: Yeah. Right below.

5 MR. LINDSLEY: Here.

6 THE WITNESS: Okay. Yeah. So right.  
7 We attempted to identify vacant positions and her  
8 supervisor made her aware that there were going to  
9 be -- or there was going to be a budget analyst  
10 position. I don't know if she said a position or  
11 positions.

12 BY MR. BUDD:

13 Q. Okay. Was Ms. Bernard qualified for the  
14 budget analyst one position that was being created?

15 A. I don't know.

16 Q. Okay.

17 A. Because she would have gone through a  
18 selection in a sense to determine that.

19 Q. Okay. And is that because it's an EHRA  
20 position or -- yeah. Is that because it's an EHRA  
21 position?

22 A. It's an EHRA position and we will do  
23 competitive searches for those.

24 Q. Okay. Got it.

25 So going back to thirteen then just, I



1 don't -- yeah.

2 Is that still the testimony of the  
3 University today, that there were no open vacant  
4 positions with the defendant for which the  
5 plaintiff qualified at the termination of her  
6 employment?

7 A. There were no vacant positions that we knew  
8 she would be qualified for which would be the  
9 accounting positions, accounting technician  
10 positions and she had not raised other positions of  
11 interest, she had not applied for any other  
12 positions. We don't -- we don't have current  
13 resumes for our employees --

14 Q. Okay.

15 A. -- it's not part of the process. So,  
16 that's kind of why we tell them you can apply for  
17 anything you think you're qualified for and  
18 interested in.

19 Q. Okay.

20 A. If we don't find a comparable position.

21 Q. Okay. And so your testimony though is that  
22 the search that the University conducted for  
23 comparable positions was to identify the accounting  
24 technician positions; correct?

25 A. Correct.

1 Q. Was there anything else that they did to  
2 identify comparable positions?

3 MR. LINDSLEY: Objection.

4 THE WITNESS: I'm not -- I'm not sure  
5 if others -- you know, I'm not sure beyond what I  
6 said.

7 MR. BUDD: Okay. Were there any other  
8 positions that the University looked into to place  
9 Ms. Bernard in, aside from accounting technician?

10 THE WITNESS: That she could be  
11 directly placed into?

12 MR. BUDD: Sorry. Can we go off the  
13 record for a second.

14 (A brief recess was taken.)

15 BY MR. BUDD:

16 Q. Ms. Faircloth, I honestly forget where I  
17 was prior to the break, so I apologize. I'm just  
18 going to ask what I think is something that is  
19 close to what I was asking prior to the break but  
20 if it's not, I apologize.

21 Are there any other positions at the  
22 University that the University looked for vacancies  
23 on behalf of Ms. Bernard?

24 A. We looked at accounting technician  
25 positions and that is -- you know, anything else in

1 the accounting job family would not have been  
2 relevant because we can't move someone into a  
3 higher level position. But I looked, you know, to  
4 see -- she was a journey level accounting  
5 technician, so we looked at journey level  
6 accounting technician and contributing to see if  
7 there was an open position that could be filled  
8 that we could move her to, and there was not. And  
9 we continued monitoring that but what we did at the  
10 time of her notification was to make her aware of  
11 where open positions can be found, not only at the  
12 University but statewide and that she could, you  
13 know, talk to us -- you know, I was in the room  
14 with Ms. Williams, if you have questions, to let us  
15 know and Ms. Williams, I recall her telling  
16 Ms. Bernard that there would be other positions she  
17 could apply for.

18 Q. Okay. So are there any other positions  
19 aside from accounting technician that the  
20 University searched for vacancies in, aside from  
21 the accounting technician. I think your answer is  
22 no, but I just want to make sure.

23 A. My answer is no.

24 Q. Okay. If we could go back to Exhibit 5 and  
25 the first page of Exhibit 5. I missed a big

1 question I wanted to ask you.

2 A. Is that reduction --

3 Q. Yes.

4 A. -- in force?

5 Q. Yes, ma'am. The March 23rd reduction in  
6 force for Ms. Bernard.

7 A. Got it.

8 Q. The very first sentence, the University is  
9 implementing a reduction in force because of  
10 material changes in position duties required to  
11 support current priorities and business needs.

12 What were the material changes in position  
13 duties?

14 A. The changes went to significantly greater  
15 analytical duties, analytical decision making, in  
16 terms of working with data. As opposed to an  
17 accounting technician position which is really more  
18 data entry, maybe running a standard report that's  
19 already developed.

20 Q. Any other material changes?

21 A. Well, the position descriptions are  
22 significantly different and in bullet points that I  
23 would have to be looking at them together to really  
24 point that out.

25 Q. Okay. So I think your testimony is that

1 the position -- the positions are -- the accounting  
2 technician role is more of a data entry job versus  
3 the budget analyst which is more of an analytical  
4 interpretive position. Is that a fair description  
5 and comparison?

6 A. Yes.

7 Q. Okay. All right. Did the University  
8 consider Ms. Bernard for the administrative support  
9 specialist position in the budget office?

10 (Reporter interruption.)

11 A. No.

12 Q. Why did they not consider her?

13 A. Because we looked at the job family that  
14 she was in to try to place her in a comparable  
15 position. If that position was open, I'm not sure  
16 if it was open at that time, but we did not look at  
17 positions in that administrative assistant  
18 specialist category.

19 Q. Okay. If you -- if you could go back to  
20 Exhibit 4, remember that org chart we were looking  
21 at?

22 A. Yes.

23 Q. It said SHRA 1626. It says vacant.  
24 Correct?

25 A. It was proposed, so I'm not sure if it was

1 open at the time of putting the plan together or  
2 not.

3 Q. Okay. The plan was -- if it wasn't in  
4 existence, the plan was, as part of the  
5 reorganization, to create an administrative support  
6 specialist; correct?

7 A. That is the way this appears.

8 Q. Okay. And it's the University's testimony  
9 that Ms. Bernard was not considered for that role;  
10 correct?

11 A. She was not, to the best of my knowledge.  
12 She did not apply for that position.

13 Q. It's an SHRA position; correct?

14 A. It is.

15 Q. Did she need to apply as an SHRA position?

16 A. Well, our practice, our process is that we  
17 would have looked only in the job family where her  
18 current position was to just place in a position  
19 and I don't recall there being any conversation  
20 about that position.

21 Q. Okay. If she testifies that she asked  
22 about this administration support specialist  
23 position and asked to be considered for that  
24 position, would you disagree with that testimony  
25 or --

1 A. I would disagree. Yes.

2 Q. Okay. And it's your testimony you don't  
3 recall her ever expressing interest in that  
4 position?

5 A. Correct. Yes.

6 Q. Okay. All right. Why is it the University  
7 policy to not look for lower demotions, let's just  
8 say, in a RIF situation, and present that to the  
9 employee?

10 A. So, I wouldn't say that it's not -- I would  
11 say that it's possible, but our practice is to stay  
12 within the job family and then from there let the  
13 employee explore what they're interested in. We  
14 don't know if that employee meets the requirements  
15 for a position, if they're interested in it. They  
16 might be interested because they need a position,  
17 but we don't know -- we don't know what all of  
18 their skills are. We just know here's what they've  
19 done at the University. Ms. Bernard in this case  
20 had been, you know, just as an example, had been in  
21 accounting, accounting clerk and the clerk's became  
22 technicians later. That's really all we know about  
23 her work experience.

24 Q. Ms. Bernard worked for the University for  
25 several decades. Don't you think that would have

1 been enough to understand what her qualifications  
2 were and what her skills were?

3 MR. LINDSLEY: Objection.

4 THE WITNESS: My answer would be no.

5 MR. BUDD: Okay. She spent almost 20  
6 years with the University. So in 20 years the  
7 University still couldn't tell what her skills  
8 were?

9 MR. LINDSLEY: Objection.

10 THE WITNESS: So, she was doing one  
11 position and one set of duties. To know whether  
12 she could do another position and another set of  
13 duties, we -- no one would have observed that.

14 BY MR. BUDD:

15 Q. And is it the University's position that  
16 not considering lower level positions outside of  
17 that family, that would still satisfy the policy's  
18 requirement that it engage in a systematic  
19 consideration of actions?

20 A. That is my understanding, that we're, you  
21 know, following the policy. It's consistent with  
22 what we've done.

23 Q. Okay. Going back to Exhibit 2. Exhibit 5.  
24 I'm getting all confused. Exhibit 5. Page 21.  
25 It's the second page of that exhibit. Let me know



1 when you're there.

2 A. This is the reduction in force plan?

3 Q. Yes, ma'am.

4 A. Okay. Got it.

5 Q. All right. For the March 23rd; right?

6 A. Yes.

7 Q. It says alternatives to layoff. Throughout  
8 this process we will continue to look for positions  
9 within the agency and in other agencies to avoid  
10 the involuntary separation of the employee.

11 What other agencies did the University look  
12 at to avoid the involuntary separation of  
13 Ms. Bernard?

14 A. We did not look at other agencies. We  
15 provided her -- I provided her the job -- the link  
16 to the state job postings.

17 Q. Okay. So the University did not look for  
18 positions within other agencies --

19 A. No, sir.

20 Q. -- to avoid the involuntary?

21 A. No.

22 Q. Okay. I am almost done here, ma'am. If  
23 you could, Exhibit 6 that I emailed to you last  
24 night. I will represent to you that this was  
25 again -- this was actually better than a Google

1 search. I went on Fayetteville State University's  
2 staff directory and searched for all employees of  
3 the budget office and these are the four  
4 individuals who were the results.

5 Does that appear to be what this Exhibit 6  
6 is?

7 A. It looks very outdated.

8 Q. Okay.

9 A. And -- I mean, it stands out to me that  
10 there are two names with the same position title  
11 that I do not believe that department has.

12 Q. You've anticipated my questions. So yeah.  
13 Go ahead. I'm sorry.

14 A. And Ms. Wells, I'm not sure how long ago  
15 you did your Google search. Ms. Wells is not in an  
16 accounting technician position.

17 Q. I'll represent to you that this was last  
18 night.

19 A. Yeah. So it's pulling in old information.

20 Q. Okay. Is it safe to say though that  
21 Jan-Jee Wells at one point in time was an  
22 accounting technician with the budget office?

23 A. She was.

24 Q. Okay. Do you know if she was hired before  
25 or after Ms. Bernard was terminated?

1 A. She was -- she was working with

2 Ms. Bernard. Yes. So she was here.

3 Q. Okay. According to the chart, at the time  
4 of the chart in Exhibit 4, she was listed as a  
5 finance and budget analyst three, do you know when  
6 Ms. Wells was an accounting technician?

7 A. I think it was prior to October, 2022.

8 Q. Okay. So she was promoted into this -- or  
9 into the finance and budget analyst position?

10 A. Yes. She applied for that position, was  
11 selected and promoted into the job.

12 Q. Okay. Do you know if Ms. Wells is older or  
13 younger than Ms. Bernard?

14 A. I do not know.

15 Q. So then I think you also referenced or --  
16 Natalie Blanchard and Jasmine Miller are both  
17 listed here as administrative support specialists.

18 A. Mm-hmm.

19 Q. Do you know if they are still in that  
20 position?

21 A. I believe that position is vacant.

22 Q. Okay. It's currently vacant?

23 A. I'm not sure. I think so. Yeah, but I  
24 don't think -- I don't think either -- well, I know  
25 that Ms. Blanchard is not in that position. I

1 don't know about Jasmine Miller though.

2 Q. Okay. Do you know if either of them are  
3 older or younger than Ms. Bernard?

4 A. I am not sure of their ages.

5 Q. If you had to guess, for Ms. Blanchard,  
6 Ms. Miller and Ms. Wells, do they all appear to be  
7 younger than Ms. Bernard?

8 MR. LINDSLEY: Objection.

9 THE WITNESS: So, I -- honestly, if  
10 they all three walked in the room right now,  
11 there's only one of them who I would know the name  
12 and face.

13 BY MR. BUDD:

14 Q. Okay.

15 A. And I do not know ages.

16 Q. Do you know when Jasmine Miller and Natalie  
17 Blanchard were hired for the administrative support  
18 specialist positions?

19 A. I know when Natalie Blanchard was hired.  
20 She was hired in I think -- I think she started  
21 that position in May 20 --

22 Q. May of what?

23 A. 2023.

24 Q. Okay. Thank you.

25 What about Ms. Jasmine?

1 A. I'm not certain about her.

2 Q. Okay. Do you think it was after Ms.  
3 Blanchard?

4 A. I'm thinking probably yes, just because of  
5 that, you know, org chart, the position was vacant  
6 but I am not -- I am not a hundred percent certain  
7 but I'm thinking probably yes, after.

8 Q. Okay. Ma'am, if you could just oblige me  
9 for two minutes, I think I'm done, but I want to  
10 just make sure. I'm going through my notes, if we  
11 could go off the record and Mr. Lindsley might have  
12 some questions for you as well. But hold on.

13 (A brief recess was taken.)

14 MR. BUDD: Ms. Faircloth we just took  
15 a short break. Is there anything in your previous  
16 answers that you'd like to change or add on to?

17 THE WITNESS: No.

18 MR. BUDD: Thank you so much for your  
19 time this morning. I have no further questions.  
20 Again, Mr. Lindsley might have some follow-up.

21 MR. LINDSLEY: I have no questions to  
22 follow up.

23 (The deposition concluded at 12:36  
24 p.m.)  
25

1 STATE OF NORTH CAROLINA

2 COUNTY OF WAKE

3 CERTIFICATE

4 I, Ann Marie Agranoff, a Notary Public in  
5 and for the State of North Carolina duly  
6 commissioned and authorized to administer oaths and  
7 to take and certify depositions, do hereby certify  
8 that on March 10, 2025, JULIA KATHERINE FAIRCLOTH,  
9 being by me personally duly sworn to tell the  
10 truth, thereupon testified as above set forth as  
11 found in the preceding pages, this examination  
12 being reported by me verbatim and then reduced to  
13 typewritten form under my direct supervision; that  
14 the foregoing is a true and correct transcript of  
15 said proceedings to the best of my ability and  
16 understanding; that I am not related to any of the  
17 parties to this action; that I am not interested in  
18 the outcome of this case; that I am not of counsel  
19 nor in the employ of any of the parties to this  
20 action.

21 IN WITNESS WHEREOF, I have hereto set my  
22 hand.

23  
24  
25  
\_\_\_\_\_  
Ann Marie Agranoff  
Notary Public

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## Reduction-In-Force

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### § 1. Policy

An agency or university has the authority to separate an employee whenever it is necessary due to:

- Shortage or loss of funds;
- Shortage or loss of work;
- Abolishment of a position; or
- Other material changes in position duties or organization

No loss of funds shall be required as a precondition for a reduction in force; however, an agency or university may not use the RIF process to circumvent the disciplinary process required to separate or demote an employee for a disciplinary reason.

RIF procedures also apply to position or budgetary changes that result in an involuntary reduction in an employee's work hours.

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**§ 2. Retention Factors**

Retention of employees in classes affected by a RIF action shall be based on a fair and systematic consideration, at a minimum, of the following factors:

- Type of appointment;
- Relative efficiency;
- Actual or potential adverse impact on the diversity of the work force; and
- Length of service.

Although all retention factors must be evaluated, they may be weighted differently for each RIF event to meet the needs of the employing agency or university.

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**§ 3. Area of Analysis for RIF:**

The analysis may include all or part of an agency (a unique work unit, division or entire agency/university). Differences in operation, work function, funding source, staff, and personnel administration may be considered when determining the appropriate area of analysis. However, the analysis to avoid a RIF must apply to the entire agency/university.

1. Type of Appointment: Neither temporary nor probationary employees in their initial 12 months of employment (or initial 24 months of employment for sworn law enforcement officers) shall be retained in classes in which employees with permanent appointments (those who have satisfactorily completed a probationary or equivalent trial period) must be separated in the same or related class.
2. Relative Efficiency: Relative efficiency shall be expressed as the employee's most recent overall performance rating. Management may also consider the rating for each individual or institutional goal and value when overall performance ratings are equivalent, documented employee skills and ability to perform the remaining work required of class members after the implementation of the RIF, and any active disciplinary action(s) received by the employee.
3. Actual or Potential Adverse Impact: In accordance with federal guidelines affecting equal employment opportunity and affirmative action, all decisions concerning reduction-in-force must be analyzed to determine their impact on agency utilization goals based on race and sex to avoid adverse impact in

**EXHIBIT**

**No. 2 - 3/10/25**

violation of Section 4.d of the Uniform Guidelines on Employee Selection Procedures as applied to selection rates for separation through RIF.

4. Length of Service: Total state service determines length of service credit. In determining the length of service credit, an eligible veteran shall be accorded one year of state service for each year, or fraction thereof, of military service, up to a maximum of five (5) years of credit.

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**§ 4. Avoiding a RIF**

A decision to implement a RIF must be reached only after the systematic consideration of actions designed to avoid the layoff. These actions may include but are not limited to the elimination of vacant positions; reduction in non-personnel related expenses; placement in a vacant position for which the employee qualifies; or retraining employees to facilitate placement in other positions at the agency or university.

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**§ 5. Office of Human Resources Responsibility**

The responsibilities of the Office of State Human Resources (OSHR) shall include, but are not limited to the following:

1. Establishing the Reduction in Force (RIF) Plan Requirements and Program Guidelines to be followed by all agencies and universities to ensure commitment to, and accountability throughout, State Government;
2. Reviewing, approving and monitoring RIF plans and updates for agencies;
3. Providing technical assistance, training, oversight, monitoring, evaluation, and support to the RIF program; and
4. Developing, updating, and maintaining the RIF Priority Verification List database system.

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**§ 6. Agency or University Responsibility**

The responsibilities of each Agency Head, Department Head and University Chancellor, or their designees, shall include:

1. Adhering to the RIF policy and programs that have been adopted by the State Human Resources Commission and approved by the Governor;
2. Agencies only: Submitting RIF plans and any necessary updates for approval by OSHR a minimum of one week prior to notifying employees of RIF actions; and

3. Universities only: Submit RIF plans and any necessary updates for approval by the President of the University System (or a Chancellor of a constituent institution, if delegated this power by the President of the University System) a minimum of one week prior to notifying employees of RIF actions. Submit approved RIF plans to OSHR for informational purposes within five (5) calendar days after approval.
4. Submitting employee information within 30 days of RIF notification to OSHR to maintain the RIF Priority Verification List.

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**§ 7. Notification Requirement**

The employing agency or university shall notify the employee in writing as soon as possible and in any case no fewer than 30 calendar days prior to the effective date of separation. The written notification shall include the reasons for the reduction-in-force,

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**§ 8. Appeals**

An employee separated through a reduction in force may appeal the separation only on the grounds listed in the applicable Employee Grievance Policy.

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**§ 9. Leave**

Vacation Leave: Employees may request, subject to approval by management, to exhaust vacation leave and be paid in a lump sum for the balance not to exceed 240 hours. If an employee had over 240 hours of vacation leave at the time of their separation the excess leave shall be reinstated when reemployed within one year after separation.

Bonus Leave: Bonus leave will be paid in a lump sum if eligible.

Sick Leave: Employees separated due to reduction-in-force shall be informed that their sick leave shall be reinstated if employed in any agency or university within five years.

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**§ 10. Effective Date and Duration**

This Policy is effective at the beginning of the day on October 7, 2021.

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**§ 11. History of this Policy**

Date	Version
7-28-1949	First version

8-03-1973	Established procedure for lay-off and demotion to effect reduction in force in the Employment Security Commission.
1-25-1974	A permanent employee who is separated due to reduction in force shall have the right to appeal to the State Personnel Board for a review to assure that systematic procedures were applied equally and fairly.
1-01-1976	Includes provisions for competitive service positions and provides that all reductions in force be based on systematic consideration of time of appointment, length of service, relative efficiency.
3-01-1978	<p>If an employee with five years of service is either transferred to an exempt position or occupies one that is declared exempt, upon leaving that position for reasons other than just cause, such employee shall have priority to any position that becomes available for which the employee is qualified.</p> <p>A permanent employee, who has been or is scheduled to be separated due to reduction in force, shall have priority to any position that becomes available for which the employee is qualified.</p>
8-01-1978	Reduction in force – priority consideration defined.
8-01-1979	Severance pay equivalent to two weeks approved by 1979 GA.
3-04-1981	Emergency regulation on reduction in force.
6-01-1981	Revision in the wording of the policy to include “neither temporary, probationary nor trainee employees shall be retained in cases where permanent employees must be separated in the same or related classes.” AND that type of appointment, length of service and relative efficiency do not necessarily have to be considered in that order.
08-01-1981	Policy changes due to Governor and Legislature requesting reduction in work force.
10-01-1984	Amendments to AA Policy and RIF.
06-01-1985	Deleted competitive service provisions.
07-01-1985	Section on Appeals revised to conform to Legislation requiring years of service in certain pay grades before becoming a permanent employee.
02-01-1987	Agency responsibility clarified (1) guideline must be openly available for review (2) must inform employees in writing of reasons of RIF, eligibility for priority, appeal rights, and other benefits (3) must give two weeks notice.



	Affirmative Action changed to state all decisions must be analyzed to determine impact on departmental utilization goals and to avoid adverse.
08-01-1988	Reinstatement of sick leave changed to five years instead of three years.
11-01-1990	Leave Without Pay Option deleted since no longer needed.
4-01-1993	Priority Reemployment Consideration – revised to allow a new probation period in certain situations involving the reemployment of a person involved in reduction-in-force.
3-01-1994	Changed “permanent” to “career.”
4-01-1995	Note about veteran preference added for clarification.
12-1-1995	Revised to conform to reduction-in-force statutory provisions.
6-01-2008	Under the paragraph on Leave, added provision that leave in excess of 240 shall be reinstated if reemployed within one year. (This provision has been in the Reinstatement Policy since 2002. It is added here for clarity.) (2) Changed policy to allow an employee who is reduced in force to exhaust vacation leave after their last day of work and still be paid for up to 240 hours of leave in a lump sum.
1-01-2009	A decision of the N.C. Court of Appeals said that an issue regarding the manner in which a reduction in force is carried out is no longer considered a contested case issue; therefore, the paragraph on Appeals is changed to recognize the impact of that decision. (The rule will be changed to reflect this change also.)
3-01-2011	The paragraph on Appeals was changed (per Lynn Floyd) to include appeal if it is alleged that the separation is a denial of the veteran's preference granted in connection with a reduction in force. (This change is simultaneous with the publication of the new Manual; therefore, no revision was sent out separately.)
12-01-2013	Section on “Appeals” changed to refer RIF employees to Employee Grievance Policy found in Section 7 of the HR Manual.
10-01-2014	<p>Changed trainee eligibility period from 6 months to 24 months to align with the legal definition of probationary period.</p> <p>Notification requirements were moved from “agency responsibility” and put in an independent section to place emphasis on the requirement.</p> <p>Removed the requirement for agencies to send applications of RIF employees to OSHR.</p>

	Added a clarifying statement in the “leave” section that one year time period for reinstating excess leave is from the date of separation and not the date of notification of separation.
2-06-2020	<p>Policy reviewed by the Diversity and Workforce Services Division to confirm alignment with current practices and by the Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. Reported to SHRC on February 6, 2020.</p> <p>North Carolina General Statute has been updated to reflect that no loss of funds shall be required as a precondition for a reduction in force (N.C.G.S. § 126-7.1 (b)). The policy revisions reflect this change, as well as adding some clarification regarding retention factors.</p>
10-07-2021	Policy reviewed by the Diversity and Workforce Services Division to confirm alignment with current practices and by the Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. The RIF policy was modified to reflect changes included in HB602 that allows the UNC System to approve RIF Plans.

**Reduction in Force Plan for  
Fayetteville State University  
Budget Office  
March 23, 2023**

**Background:**

Fayetteville State University, Division of Business and Finance/ Budget Office is implementing a reduction in force (RIF) because of material changes in position duties required to support current priorities and business needs. The changes in position duties will result in abolishing an Accounting Technician position and establishing a new position to address new skills required. This RIF is not being used to circumvent the disciplinary process required to separate or demote an employee for disciplinary reasons.

This action will result in the separation of one (1) employee in the Division of Business and Finance/ Budget Office. There are a total of eight (8) positions in the Division, and one (1) of these 8 positions is in the Budget Office; two (2) of the positions are vacant and six (6) positions are filled. The layoff unit is defined as the Division of Business and Finance/ Budget Office.

**Criteria:**

University management considered the retention of the employee in the Accounting Technician classification affected by a RIF action based on a fair and systematic consideration, at a minimum, of the following factors:

- Type of appointment.
  - Neither temporary nor probationary employees in their initial 12 months of employment (or initial 24 months of employment for sworn law enforcement officers) will be retained in classes in which employees with permanent appointments (those who have satisfactorily completed a probationary or equivalent trial period) must be separated in the same or related class.
- Relative efficiency.
  - Relative efficiency has been expressed as the employee's most recent overall performance rating.
- Actual or potential adverse impact on the diversity of the work force; and
  - In accordance with federal guidelines affecting equal employment opportunity and affirmative action, all decisions concerning reduction-in-force have been analyzed to determine their impact on agency/university utilization goals based on race and sex to avoid adverse impact. Pre- and post- RIF demographic analysis is included.
- Length of service.
  - Total state service determines length of service credit. In determining the length of service credit, an eligible veteran have been accorded one year of state service for each year, or fraction thereof, of military service, up to a maximum of five (5) years of credit.

Each of these factors was fairly and systematically evaluated. However, some of the factors were weighted differently to meet the operational needs of the University. Relative efficiency

was a critical factor in the evaluation process due to the increased demands on the Budget Office that require additional knowledge and skills.

#### **Alternatives to Layoff:**

The University reviewed current and anticipated vacancies in the Division of Business and Finance for potential openings and has not identified a suitable opportunity for the affected employee. Throughout this process, we will continue to look for positions within the agency and in other agencies to avoid the involuntary separation of the employee. Contact has been made with the UNC System Office to review and approve this RIF plan.

#### **Composition of the Affected Work Force:**

<b>Name Demographics</b>	<b>Title/ Dept.</b>	<b>Comp level</b>	<b>Position Number</b>	<b>Funding Source</b>	<b>Length of Service (Years)</b>	<b>Performance</b>
Lisa Bernard Female, Black, 56	Accounting Technician, Budget	Journey	000090	State	19 years, 3 months	Not Meeting Expectations
██████████ Female, Black, 37	Accounting Technician, Finance	Contributing	000055	State	3 years, 2 months	Meets Expectations
██████████ Female, Black, 41	Accounting Technician, Finance	Journey	000017	State	3 years, 1 month	Meets Expectations
██████████ Female, Black, 42	Accounting Technician	Journey	000118	State	17 years, 1 month	Meets Expectations
██████████ Female, Black, 52	Accounting Technician, Finance	Journey	000123	State	14 years, 9 months	Meets Expectations
██████████ Female, Black, 58	Accounting Technician, Finance	Journey	000293	State	14 years, 1 month	Meets Expectations
Vacant- being reclassified to Budget Analyst (EHRA)	Accounting Technician, Finance	Advanced	000012	State		
Vacant	Accounting Technician, Finance	Advanced	000121	State		

Based on the criteria listed above:

The following employees will be retained:

██████████ Position #000055  
 ██████████ Position #000017  
 ██████████ Position #000118  
 ██████████ Position # 000123  
 ██████████ Position #000293

The following employee will be separated effective April 30, 2023. Position number 000090, Accounting Technician-Journey, will be abolished. A new position will be created to address the knowledge and skills required to meet the business needs of the Budget Office.


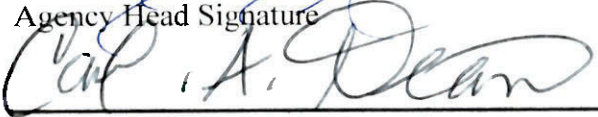
Lisa Bernard, Position # 000090

**Timeline:**

Notice must be given to the impacted employee on or before March 31, 2023, in order that we meet the statutory requirement of thirty calendar days notification. The expected date of separation is April 30, 2023.

This proposed reduction in force will not adversely affect the agency's workforce demographics. An adverse impact analysis worksheet is attached.

If you have questions regarding this plan, please contact Kay Faircloth for additional information.

	<u>3-24-2023</u>
Agency Head Signature	Date Signed
	<u>3/24/2023</u>
Director of Human Resources Signature	Date Signed